



Brownfields Tax Incentive

OVERVIEW

The Brownfields Tax Incentive, intended to remove many of the financial disincentives preventing the cleanup and reuse of blighted property, was amended in December 2000 (as part of Public Law 106-554).

Originally signed into law in August 1997, the Taxpayer Relief Act (Public Law 105-34) included a tax incentive to spur the cleanup and redevelopment of brownfields in distressed urban and rural areas. The Brownfields Tax Incentive builds on the momentum of the May 1997 Brownfields National Partnership Action Agenda, which outlines a comprehensive approach to the assessment, cleanup, and sustainable reuse of brownfields, and includes specific commitments from more than 20 federal agencies. The Brownfields Tax Incentive is helping to bring thousands of abandoned and under-used industrial sites back into productive use, providing a foundation for neighborhood revitalization, job creation, and the restoration of hope in our nation's cities and distressed rural areas.

BACKGROUND

Federal tax law generally requires that those expenditures that increase the value or extend the useful life of a property—or those that adapt the property to a different use—be capitalized; and, if the property is depreciable, that the costs be depreciated over the life of the property. This means that the full cost cannot be deducted from income in the year that the expenditure occurs. This capitalization treatment also applies to the cost of acquiring property. In contrast, repair and maintenance expenditures generally can be deducted from income in the year incurred. Prior to the Brownfields Tax Incentive, many environmental remediation expenditures fell under these restrictions, and had to be capitalized over time.

In 1994, the Internal Revenue Service (IRS) issued a ruling stating that certain costs incurred to clean up land and groundwater could be deducted as business expenses in that same year. However, the ruling only addressed cleanup costs incurred by the same taxpayer that contaminated the land. It therefore did not apply to cleanup costs incurred by a party that had purchased contaminated property, or to an owner interested in putting the land to new use. In addition, the IRS ruling was unclear as to whether other remediation costs not

specifically addressed in the ruling would be deductible in the year incurred or would have to be capitalized.

These unresolved issues created potential financial obstacles in the contaminated properties market. Specifically, owners of contaminated property could remediate their property and sell the clean property at its full market value, enabling them to fully recover the costs of remediation. However, prospective purchasers of contaminated property had to purchase the property at its impaired value, and then capitalize any cleanup costs. This often left prospective purchasers of contaminated land—many of whom wished to return the land to productive use—at a financial disadvantage. Additionally, property owners who wanted to remediate their property and put it to a different use were at a disadvantage because they were not able to fully deduct their remediation costs in the year incurred.

THE TAX INCENTIVE

Under the Brownfields Tax Incentive, environmental cleanup costs are fully deductible in the year they are incurred, rather than having to be capitalized. The government estimates that while the tax incentive costs approximately \$300 million in annual tax revenue, the tax incentive is expected to leverage \$3.4 billion in private investment and return 8,000 brownfields to productive use. This ability to spur investment in blighted properties and revitalize communities makes the tax incentive a valuable tool for restoring brownfields.

The Brownfields Tax Incentive was initially applicable to properties that met specific land use, geographic, and contamination requirements. The geographic requirements were removed on December 21, 2000, leaving only land use and contamination qualifications for expenditures on or after December 21, 2000.

To satisfy the land use requirement, the property must be held by the taxpayer incurring the eligible expenses for use in a trade or business or for the production of income; or, the property must be properly included in the taxpayer's inventory. To satisfy the contamination requirement, hazardous substances must be present or potentially present on the property.

While amended tax returns may be filed to deduct expenditures from prior tax years, costs incurred after August 5, 1997, the effective date of the initial tax incentive law, and prior to December 21, 2000, can only be deducted in the same year if the property qualifies under the tax incentive's original geographic criteria.

To meet the geographic requirement, the property must be located in one of the following areas:

- EPA Brownfields Assessment Pilot areas designated prior to February 1997;
- Census tracts where 20 percent or more of the population is below the poverty level;
- Census tracts that have a population of less than 2,000, have 75 percent or more of their land zoned for industrial or commercial use, and are adjacent to one or more census tracts with a poverty rate of 20 percent or more; and
- Any federally designated Empowerment Zone or Enterprise Community.

Both rural and urban sites may qualify for this tax incentive. Sites listed, or proposed for listing, on EPA's National Priorities List are not eligible for the tax incentive.

As part of the December 2000 amendments, the Brownfields Tax Incentive was extended for an additional two years, to cover qualifying expenditures from the original date of the incentive's enactment until midnight of December 31, 2003.

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